

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

HOWARD BODDIE, JR.,

Plaintiff,

vs.

**Case No.: 2:15-cv-06
JUDGE SMITH
Magistrate Judge Kemp**

SCOTT J. VAN STEYN,

Defendants.

ORDER

On July 17, 2015, the United States Magistrate Judge issued a *Report and Recommendation* recommending that the Court “certify that the appeal is not taken in good faith, which is one basis on which to deny the motion for leave to appeal *in forma pauperis*, and deny the motion because, as a prisoner subject to the “three strikes” rule, Mr. Boddie is not entitled to proceed on appeal without paying the filing fee.” (See *Report and Recommendation* at 2, Doc. 10). The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Plaintiff’s Objections to the Magistrate Judge’s *Report and Recommendation*. (See Doc. 11). The Court will consider the matter *de novo*. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff’s Objections continue to challenge the Magistrate Judge’s conclusion and this Court’s adoption that the “three strikes” rule applies to this case. However, that issue has been ruled upon and is no longer pending before this Court. Further, the Defendant notes that despite filing an appeal, he is confused as to why this matter is still before this Court. The Magistrate

Judge correctly explained this in the *Report and Recommendation*. The Court of Appeals only has jurisdiction to hear final appealable orders, but none have been issued in this case.

Accordingly, the notice of appeal is premature.

The Court has carefully reviewed the Report and Recommendation and Plaintiff's objections. The Court agrees with the findings of the Magistrate Judge that the appeal in this case is not taken in good faith. And, for that same reason, Plaintiff's motion to proceed *in forma pauperis* is denied. Further, Plaintiff, a prisoner subject to the "three strikes" rule, is not entitled to proceed on appeal without paying the filing fee.

Therefore, for the reasons stated in the *Report and Recommendation*, this Court finds that Plaintiff's objections are without merit and are hereby **OVERRULED**.

The Clerk shall remove Documents 8 and 10 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT